IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.729 OF 2001

Sunil Jaidayal Khurana
& anr. ..Petitioners.

Vs.

Bombay Municipal Corporation
& Ors. ..Respondents.

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Mr. G.V.Murti for the Petitioners.

Mrs. A.R. Joshi for the BMC.

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CORAM : DR.D.Y.CHANDRACHUD, J.

28th January, 2005.

P.C. :

1. The dispute in the present case relates to a demand made by the Municipal Corporation on account of water tax and sewerage tax in the total amount of Rs.20,35,139/- in pursuance of the Municipal Commissioner's letter dated 11th December, 2000

(Exh.S-1). The premises in question are situated at 384, Veer Savarkar Marg, Prabhadevi, Mumbai 400 025. The business of dyers and dry cleaners was conducted in the premises since 1957. In 1963 two water connections respectively of a diameter of one and 1/2" and 1" came to be granted in the name of Modern Dyers and Dry-cleaners under Section 169 of the Mumbai Municipal Corporation Act,1888. These two connections, popularly known as "quota" connections, were on the basis of a quota of 9.32 lacs litres per month. Originally two structures were situated on the property; the first was assessed as Ward No.2668(1A) being the factory and the second as Ward No.2668(1AA) being the dyeing work office. These structures were demolished and new structures came up respectively in the years 1976 and 1986 upon reconstruction. One of the new structures was assessed in the municipal records from 1st July, 1976 as Ward No.2668(1AB) while a structure bearing No.2668(1ABC) was assessed from 19th January, 1986.

2. On 16th May, 1988 another water connection of 1/2" diameter was granted for office purposes under

Section 92 of the Act to the premises. Some time in the year 1990, a lock out is stated to have been declared in the factory of the Petitioner and the business was thereafter closed down. On 29th January, 1991 the Petitioner informed the Respondents to disconnect the two water connections, which were then disconnected. The third connection of 1/2" diameter which was granted on 16th May, 1988 was according to the Municipal Corporation used for a restaurant known as Spencer Restaurant that was situated in the newly constructed premises. No new water connection was taken for the restaurant.

3. It appears that the owners of the business requested the Municipal Corporation to convert the connection from a connection under Section 92 to one under Section 169 of the Act with effect from 29th January, 1991, the date of disconnection of the other two water connections. The Hydraulic Engineer prepared a report and placed it before the Municipal Commissioner. The Municipal Commissioner is stated to have issued a direction to the effect that the owners should take a permanent water

connection for their newly constructed premises assessed as Ward No.2668(1AB) and 2668 (1ABC) stating the purpose for which the connection would be required and a separate connection for the purpose of the hotel with effect from 29th September, 1992 which was the date from which the Health Department had issued a licence. These directives were communicated to the Petitioner on 20th October, 1999 with a request for early compliance, failing which the 1/2" diameter connection would be disconnected. These requisitions according to the Municipal Corporation were not complied with until 27th January, 2000 upon which the 1/2" diameter water connection came to be disconnected.

4. A representation was thereafter made by the Petitioner in pursuance of which several meetings took place in the office of the Municipal Commissioner to resolve the dispute. According to the affidavit filed by the Municipal Corporation it was then decided to work out fresh dues treating the 1/2" diameter water connection under Section 169 for the portion representing the hotel and on

that basis the Petitioner was required to clear all the outstanding dues. On 11th December, 2000 the Municipal Commissioner addressed a letter to the Petitioner calling upon him to pay an amount of Rs.20,35,139.50. This was arrived at after excluding an amount of Rs.79,267/- for the period between 3rd August, 1995 and 27th January, 2000. A further meeting then took place on 18th January, 2001 before the Additional Municipal Commissioner at which the Petitioner and the officials of the Corporation were present. At that meeting, it was directed that the 1/2" diameter connection that was used for the factory premises from 2nd February, 1995 to 20th December, 1995 would not give rise to a liability to pay the water and sewerage taxes. However, from 29th December, 1995 onwards the factory did not have a water connection and consequently water tax and sewerage tax were leviable on the ground that the 1/2" diameter water connection was used for Spencer Restaurant. Before the decision could be communicated to the Petitioner, the instant proceedings were filed.

5. Counsel for the Petitioner has relied upon the

provisions of Section 141 and 169 of the Mumbai Municipal Corporation Act, 1888. Under Section 141 water tax can be levied only in respect of premises to which a private water supply is furnished from or which is connected by means of communication pipes with, any municipal water works; or which premises are situated in a portion of the city in which the Commissioner has given public notice that sufficient water is available from the municipal water works. Section 169 empowers the Standing Committee to frame rules determining (i) the charges for the supply of water by a water tax and water benefit tax levied under Section 140 at a percentage of the rateable value; or (ii) a water charge in lieu of a water tax, based on a measurement or estimated measurement of the quantity of water supplied. The provision also allows the levy of a combined charge under clauses (i) and (ii); or a compounded charge in lieu thereof. Sub section (2) then provides that a person who is charged for supply of water under clause (ii) or (iv) of sub section (1) meaning thereby a water charge in lieu of a water tax or a compounded charge shall not be liable for payment

of the water tax, but any sum payable by him and not paid by him when it becomes due shall be recoverable by the Commissioner as if it were an arrear of property tax due. On behalf of the Petitioner it has been stated that the Petitioner has paid all the bills that were raised from time to time on account of water charges in respect of the metered water connection. In that view of the matter, it was urged that the water taxes could not have been levied in view of the provisions of Section 169.

6. The order which has been passed by the Municipal Commissioner does not contain any reasons or basis for the demand for Rs.20,35,139/-. The Commissioner has by his communication dated 11th December, 2000 considered it appropriate to delete the demand for the period between 3rd August, 1995 upto 22nd January, 2000. On what basis the demand for the balance has been raised does not find any adequate justification in the impugned order, nor for that matter does the affidavit filed by the Municipal Corporation throw light on the issue particularly with reference to the provisions of

Section 169 of the Act. Counsel for the Corporation was also not in a position to throw any light on the issue. When this matter was admitted, the Petitioner was directed to pay an amount of Rs.2.50 lacs to the Municipal Corporation conditional upon which an order was passed in terms of prayer clause (d) of the Petition restraining the Municipal Corporation from enforcing its warrant of attachment or the order of the Commissioner dated 11th December, 2000. In my view, the submissions which have been urged would warrant a fresh consideration and a reasoned order by the Municipal Commissioner. In order to facilitate a fresh determination and the passing of a reasoned order, the impugned order dated 11th December, 2000 shall stand quashed and set aside. The parties shall appear before the Municipal Commissioner on 14th February, 2005 at 12 noon. The Municipal Commissioner shall set down on the aforesaid date the matter for hearing at a convenient date so that a fresh decision can be arrived at in the matter on or before 30th April, 2005. The Petition is disposed of in the aforesaid terms. There shall be no order as to costs.